

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

The Examiner has withdrawn allowability of claim 7, 10-13 and 19-22. The Examiner has objected to the drawings. Claim 11 has been cancelled to overcome this objection.

In addition the specification has been amended to clarify the meaning of a paragraph. Entry of this amendment is respectfully requested in view of the disclosure of the drawings (See for example FIGS. 11, 14 and 15) which show that the "star shaped configuration" which has openings allowing for an osseous connection to grow.

In addition, under 37 C.F.R. 1.57(a), this statement is also incorporated in by reference as the parent application DE 10311477 supports this statement. The above cited paragraph was filed with an error in translation. The present amendment is designed to correct this error. A copy of this application was forwarded to the patent office. A literal translation of this document is also enclosed, wherein this disclosure can be found

in the literal translation in the paragraph starting on page 3 last paragraph.

The Examiner has rejected claims 1, 3, 5, 9, 10, 17, 23 and 24 as being anticipated by U.S. Patent Application Publication No. 2003/0045877 to Yeh. Claim 1 has been amended to include the elements of claim 16. Therefore, it is respectfully submitted that claim 1 is now patentable over the above-cited rejection.

The Examiner has rejected claims 1-6, 9, 10 and 15 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,657,550 to *Daher*. Again as cited above, claim 1 has been amended to include the elements of claim 16. Therefore, it is respectfully submitted that claim 1 is now patentable over the above-cited reference. Since the dependent claims are dependent upon claim 1, it is respectfully submitted that these claims are also patentable over the above-cited rejection.

The Examiner has rejected claims 2, 8, 14-16, 18 and 25 under 35 U.S.C. 103(a) as being unpatentable over Yeh. The Examiner states that the joining plate having a star shape would have been obvious matter of design choice to one skilled in the art at the time the invention was made. The Examiner also has stated on page 8 of the rejection that the Applicant has not

disclosed any stated problem or anything more than a numerous shapes or configurations that any person skilled in the art would find obvious for providing a surface and adjoining plate in the shape of adjoining plate. The Applicant respectfully traverses this statement and this rejection. On page 7 of the Specification, second paragraph, it states,

The implant, structured as a modular system, can be made variable in shape wherein the joining plate is configured as a polygon, in a rounded manner, or, alternatively, in a star-shaped manner. The star-shaped configuration of the joining plate, in particular, is set so that a closed surface is not formed as a sharp separating plane between the vertebrae and the implant arranged below the joining plate. This creates the possibility that an osseous connection will form between the two vertebrae wherein an implant can grow into place particularly well, particularly if bone chips, bone cement, or the like is used in supportive manner.

As stated above, the particular shape, in particular, the star-shaped configuration in the joining plate, is formed such that creates a possibility that an osseous connection will form between the two vertebrae wherein an implant can grow into place particularly well, particularly if bone chips, bone cement, or similar elements are used in this supportive manner. It is clear from this explanation that the shape of the joining plate is particularly important in this matter. Therefore, it is

respectfully submitted that the Applicant has presented sufficient reason for the particular star-shaped configuration. Since *Yeh* does not disclose this type of configuration, it is respectfully submitted that this feature is patentable over the publication to *Yeh*. Therefore, it is respectfully submitted that claim 1 and dependent claims 2, 3, 5, 6, 8-15 and 17-27 are patentable over the above-cited rejections and references.

The Examiner has rejected claims 1, 2, 3, 5, 8-10, 14-18, 23, 24 and 25-28 as being unpatentable over U.S. Patent Application Publication No. 2003/0176925 to *Paponneau* in view of *Yeh*. Claim 1 as stated above has been amended to include the elements of claim 16, which has not been disclosed in *Yeh*. In addition, claim 28 has also been amended to include the elements of claim 16. Therefore, it is respectfully submitted that since none of the above references include a star-shaped configuration for joining plates, claims 1 and 28 and the remaining dependent are all allowable over the above-cited references taken either singly or in combination.

The Examiner has rejected claims 19-22 and 29 as being unpatentable over *Paponneau* in view of *Yeh* in further view of *Strand*. Claims 1, and 29 have been amended to include the elements of claim 16. For the reasons stated above, it is

respectfully submitted that since none of the above references include a joining plate having a star-shaped configuration, it is respectfully submitted that claim 1 and claim 29 are patentable over the above-cited references. In addition, claims 19-22 which depend from claim 1 are also patentable over the above-cited references.

The Examiner has rejected claims 12 and 13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,657,550 to *Daher* in view of U.S. Patent No. 6,171,059 to *Bucher*.

For the reasons stated above, it is respectfully submitted that since claims 12 and 13 depend from allowable claim 1, these claims are now allowable.

The Examiner has rejected claims 1, 6, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0181980 to *Berry* in view of *Yeh*.

As stated above, since claim 1 has been amended to include the elements of claim 16, it is respectfully submitted that claim 1 and it's dependent claims, including claims 6 and 9-11 are patentable over the above-cited references taken either singly or in combination. This is because none of the above-cited


NEUMANN, C. -1
10/801119

references disclose a joining plate having a star-shaped configuration.

In conclusion, independent claims 1, 28 and 29 have been amended to include elements of claim 16; claims 4, 7 and 16 have been cancelled. No new matter has been added. Accordingly, early allowance of the remaining claims is respectfully requested.

Respectfully submitted,

COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802


William C. Collard, Reg. No. 38,411
Attorney for Applicant